

TENTATIVE RULINGS

FOR: October 25, 2016

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – No tentative ruling will be posted because access to records is not permitted until 60 days after the complaint is filed. Parties **must appear** for all unlawful detainer demurrers, motions to quash, and other matters. After 60 days, tentative rulings will be posted in accordance with the local rules.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. Diane Price, Dept. C (Historic Courthouse)

In the Matter of Andrea S. Flores

16CV000760

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: The matter is continued to November 1, 2016, at 8:30 a.m. in Dept. C.

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Conservatorship of Agustin Bravo

16MH000082

PETITION FOR APPOINTMENT OF LPS CONSERVATOR

APPEARANCE REQUIRED

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Conservatorship of Pamela Young

26-65152

PETITION OF NOTICE OF SURCHARGE AND TO COLLECT ON THE SURETY

TENTATIVE RULING: The unopposed Petition is GRANTED as prayed.

Estate of Margaret Joanne Jensen

26-68120

WAIVER OF ACCOUNTING AND PETITION FOR SETTLEMENT OF ESTATE; FOR
STATUTORY ATTORNEY'S FEES AND FOR FINAL DISTRIBUTION

TENTATIVE RULING: GRANT Petition, including fees as prayed.

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In The Matter of The Spiro T. Geich Trust 7/24/13

26-68298

SECOND ACCOUNT AND REPORT OF TRUSTEE; PETITION FOR APPROVAL OF
SETTLEMENT AGREEMENT, PAYMENT OF TRUSTEE'S FEES, ATTORNEYS FEES
AND FINAL DISTRIBUTION

TENTATIVE RULING: The Petition is GRANTED as prayed. The OSC hearing set
for October 26, 2016 is vacated.

**CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. C (Historic
Courthouse)**

David Mustard, et al. v. Norcal Transports Inc., et al.

16CV000556

MOTION FOR LEAVE TO INTERVENE

TENTATIVE RULING: The County of Napa's unopposed motion for leave to
intervene is GRANTED.

**PROBATE CALENDAR – Hon. Rodney Stone, Dept. F (Criminal Courts Bldg.-
1111 Third St.)**

In the Matter of Susy Espinosa de Lopez

16CV000767

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections
have been filed. The petition for name change is GRANTED without need for appearance.

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Estate of Elizabeth Grice Lindblom

16PR000053

REPORT OF EXECUTOR AND PETITION FOR SETTLEMENT, FOR ALLOWANCE OF
COMPENSATION TO EXECUTOR AND ATTORNEYS FOR ORDINARY SERVICES AND
FOR FINAL DISTRIBUTION

TENTATIVE RULING: GRANT petition, including fees as prayed.

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Conservatorship of Joanne R Zimmer

16PR000059

PETITION FOR TERMINATION OF CONSERVATORSHIP OF THE ESTATE

TENTATIVE RULING: The Petition is GRANTED as prayed.

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Estate of Everett Thomas Guigni

16PR000169

PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY AND
AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION
OF ESTATES ACT

TENTATIVE RULING: GRANT petition. Before or at the hearing petitioner shall
submit the proposed letters (Judicial Council form DE-150) conforming to the petition.

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Estate of Louise Newsome

26-66407

FIRST AND FINAL ACCOUNT AND REPORT AND PETITION FOR ITS SETTLEMENT,
FOR DETERMINATION OF ENTITLEMENT TO ESTATE DISTRIBUTION, FOR
ALLOWANCE OF COMPENSATION, AND FOR FINAL DISTRIBUTION

TENTATIVE RULING: GRANT petition, including fees as prayed.

**CIVIL LAW & MOTION CALENDAR – Hon. Rodney Stone, Dept. F (Criminal
Courts Bldg.-1111 Third St.)**

Lydia Daniels v. JP Morgan Chase Bank, N.A.

16CV000667

DEFENDANT JPMORGAN CHASE BANK, N.A.'S DEMURRER TO PLAINTIFF'S
COMPLAINT

TENTATIVE RULING: The Notice of Motion does not provide notice of the court's
tentative ruling system as required by Local Rule 2.9. Defendant's counsel is directed to contact
Plaintiff's counsel forthwith and advise Plaintiff's counsel of Local Rule 2.9 and the court's

tentative ruling procedure. If Defendant's counsel is unable to contact Plaintiff's counsel prior to the hearing, Defendant's counsel shall be available at the hearing, in person or by telephone, in the event Plaintiff's counsel appears without following the procedures set forth in Local Rule 2.9.

The unopposed Demurrer is SUSTAINED WITHOUT LEAVE TO AMEND. Defendant's Request for Judicial Notice is GRANTED. Plaintiff's complaint appears to be barred by res judicata as there was a final judgment entered against her in case number 26-63207, which involved the same claims being made in the instant lawsuit.

CIVIL LAW & MOTION CALENDAR – Hon. Elia Ortiz, Dept. G (Criminal Courts Bldg.-1111 Third St.)

VSS International Inc. v. Chester Bross Construction, et al.

26-66204

1) DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND EXTRA-STATUTORY COSTS AGAINST PLAINTIFF

TENTATIVE RULING: Defendants' Motion is GRANTED in the amount of \$384,694.91 (\$282,258.25 in attorneys' fees and \$102,436.66 in costs, as addressed in the court's tentative ruling below). Defendants are the prevailing parties in this case as they obtained a jury verdict completely in their favor. Defendants are entitled to attorneys' fees pursuant to: (1) the contract documents, specifically the Credit Application (which is reciprocal under Civil Code section 1717) and Section 10 of the Purchase Order, and (2) statutory grounds (Bus. & Prof. Code § 7108.5, Pub. Contract Code §§ 10262.5, 7107, and Civ. Code § 9564), which Plaintiff did not dispute in opposition. The amounts incurred by Defendants' counsel were reasonable.

2) PLAINTIFF'S MOTION TO TAX COSTS

TENTATIVE RULING: Plaintiff's Motion is GRANTED IN PART AND DENIED IN PART. The Motion is GRANTED as to Item 1d, the messenger fees of \$499.95, Item 2(b) the same day service and check charge fees of \$120, Item 5, \$473.90 in messenger and Federal Express fees, and Item 13, \$1,834.76 in meal costs. This results in a total deduction of \$2,928.61 from the \$105,365.27 (excluding attorney fees) sought in Plaintiff's Memorandum of Costs filed on August 12, 2016, for a new costs total (excluding attorney fees) of \$102,436.66.

The Motion is DENIED as to the remaining cost items. The Code of Civil Procedure section 998 offer that Defendants made to Plaintiff on September 14, 2015 is valid and enforceable and allows Defendants recovery of their expert fees. The language of the offer was sufficiently certain in limiting its application to the instant action and claims that could have been brought in the instant action. Plaintiff argues that the claims asserted in the Imperial County action could have been asserted in the instant action, but fails to explain how the claims it asserted in its October 19, 2015 Cross-Complaint in the Imperial County action could have been properly asserted in this action. The cases cited by Plaintiff are distinguishable as they all involve offers that required the release of damages and/or third parties that were unrelated to the

pending action or an undescribed and unexplained settlement agreement. (See *Valentino v. Elliott Sav-On Gas, Inc.* (1998) 201 Cal.App.3d 692; *Chen v. Interinsurance Exchange Of Automobile Club* (2008) 164 Cal.App.4th 117; *Sanford v. Rasnick* (2016) 246 Cal.App.4th 1121; *McKenzie v. Ford Motor Co.* (2015) 238 Cal.App.4th 695.) As to the hotel costs, the court finds those charges to be reasonable (given the going rate of Napa hotel rooms) and necessary for the trial.